

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

DAVID WHITE,

Appellant,

v.

UNIVERSITY OF WASHINGTON,

Respondent.

)  
) Case No. DISM-98-0047  
)

) FINDINGS OF FACT, CONCLUSIONS OF  
) LAW AND ORDER OF THE BOARD  
)

**I. INTRODUCTION**

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and NATHAN S. FORD JR., Member. The hearing was held in Room 246 of the South Campus Center on the campus of the University of Washington, Seattle, Washington, on September 1, 1999. GERALD L. MORGEN, Vice Chair, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances..** Appellant was present and was represented by Edward E. Younglove III, Attorney at Law of Parr and Younglove, P.L.L.C. Respondent University of Washington was represented by Jeffrey W. Davis, Assistant Attorney General.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for neglect of duty and/or violation of departmental policy and/or unauthorized possession of University property and/or failure to provide truthful and/or complete information during an investigation and/or unauthorized entry into a University building. Respondent alleges that Appellant was in possession of two unauthorized University keys, that he used the keys to gain access to a building when he was

1 not scheduled to do so, and that he withheld information during the investigation about how and  
2 from whom he obtained the unauthorized keys.

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4 1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084  
5 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Skaalheim v.  
6 Dep't of Social & Health Services, PAB No. D93-053 (1994).

## 7 8 **II. FINDINGS OF FACT**

9 2.1 Appellant David White was a Custodian and a permanent employee of Respondent  
10 University of Washington (UW). Appellant and Respondent are subject to Chapters 41.06 and  
11 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC. Appellant filed a  
12 timely appeal with the Personnel Appeals Board on September 21, 1998.

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14 2.2 By letter dated September 15, 1998, Jeraldine McCray, Assistant Vice President of Facilities  
15 Services notified Appellant of his dismissal. Appellant's dismissal was effective at the end of his  
16 work day on September 30, 1998. Ms. McCray alleged that Appellant neglected his duty, violated  
17 departmental policy, had possession of unauthorized University property, failed to provide truthful  
18 and/or complete information during an investigation, and entered a University building when he  
19 was not authorized to do so.

20  
21 2.3 Appellant began his employment at the UW as Custodian on April 1, 1974. Appellant has  
22 received previous disciplinary actions as a result of his excessive absenteeism and tardiness. In  
23 addition, he has received informal corrective actions for excessive absenteeism, failure to follow  
24 security procedures, exhibiting hostile behavior and inconsistently performing his custodial duties,

1 taking unauthorized breaks and not working during work hours, and being out of his work area  
2 during work hours.

3  
4 2.4 At the outset of the hearing on this matter, Appellant stipulated to the facts in the  
5 disciplinary letter. Appellant stated that he did not contest the basis for the action or the allegations  
6 in the disciplinary letter.

7  
8 2.5 Appellant's scheduled work shift began at 5 a.m. and ended at 1:30 p.m. He was assigned  
9 the cleaning of the Engineering Library. Prior to entering the building each morning, Appellant  
10 reported to the Northlake Building, punched in at the time clock, and obtained keys to the buildings  
11 he was to clean from his lead or supervisor. At the end of each work day, Appellant punched out at  
12 the time clock and returned his keys to his lead or supervisor. On May 14, 1998, Appellant  
13 obtained and returned his keys in the normal fashion.

14  
15 2.6 The Engineering Library closed at 10 p.m. on May 14, 1998. Laura Hall, Library  
16 Technician Lead, was responsible for securing the building. She and her student assistants cleared  
17 the building and at approximately 10:15 p.m., they locked the doors and left the building. While  
18 Ms. Hall was waiting for the bus across the street from the library, she saw the shadow of a person  
19 move past a window on the fourth floor of the building. Ms. Hall called 911 and the University  
20 Police responded to the library.

21  
22 2.7 When the police searched the building, they found Appellant standing by the elevator on the  
23 second floor. Appellant informed the police that he had entered the building using a key. The  
24 police retrieved two keys from Appellant and the police dispatcher contacted Appellant's  
25  
26

1 supervisor. Appellant was removed from the building and was told that he was not to be in the  
2 building until the beginning of his scheduled shift.

3  
4 2.8 When Respondent questioned Appellant about how he gained access to the building,  
5 Appellant said that he used his personal keys. He also said that the keys had been given to him by a  
6 staff person whom he refused to identify. Respondent determined that the keys that had been in  
7 Appellant's possession were unauthorized.

8  
9 2.9 One of the keys in Appellant's possession was a "great grandmaster key" and could be used  
10 to open every door in the Engineering Library except for the custodial closets and some mechanical  
11 areas. In addition, it unlocked virtually all the doors in the adjacent Loew Hall. The second key  
12 was an elevator key that was used to gain access to the basement level of the library. The elevator  
13 key taken from Appellant was not produced by the University Lock Shop, but rather had been  
14 copied by the Alki West Seattle Key & Lock Company.

15  
16 2.10 The UW Physical Plant has rules and procedures that are to be followed by Custodial  
17 Services employees which provide, in relevant part:

18 C. Key Procedures

19 Keys are University property and are your responsibility when in your possession.  
20 The safekeeping of keys is one of your most important responsibilities. Failure to  
21 follow these procedures is grounds for disciplinary action.

22 Procedures:

- 23 1. Each custodial run assignment is assigned a set of keys which are issued  
24 daily at the beginning of each shift by your Supervisor or his/her designee.  
25 At the beginning of the shift, your time card is exchanged for your assigned  
26 keys and returned to you when you return the keys at the end of your shift.
2. Keys . . . should never be loaned to anyone without supervisory approval.

1 . . . .

2 4. . . . Individual keys are not be removed from key rings or switched to  
3 another key ring.

4 5. Keys are not to be taken away from the University. . . .

5 . . . .

6 7. Keys are NOT to be duplicated.

7 D. Building Security

8 1. Our division plays an important role in building security by unlocking and  
9 locking entry doors. An arranged schedule may be part of your daily work  
10 assignments. Your Supervisor will review schedules with you, as well as  
proper techniques for locking and unlocking the variety of doors on campus.

11 . . . .

12 6. . . . Building security is important for your safety as well as the safekeeping  
13 of University property. . . .

14 . . . .

15 VII. Disciplinary Action

16 . . . the following are examples of some of the kinds of behavior which may be  
17 grounds for disciplinary action, which may include . . . termination. . . . This list is  
18 not intended to describe all behaviors which may be grounds for such action.

19 . . . .

20 3. . . . misusing, . . . stealing, or removing property from University  
21 premises.

22 . . . .

23 11. Failing to adhere to safety regulations or misusing equipment or supplies.

24 . . . .

25 15. Failing to adhere to the published University of Washington and Custodial  
26 Division's Rules and Procedures herein.

1  
2 2.11 Appellant was aware of the Custodial Division's Rules and Procedures.

3  
4 2.12 Gene Woodard is the Director of Physical Plant Custodial Services. Mr. Woodard  
5 recommended Appellant's dismissal to Ms. McCray. Mr. Woodard determined that Appellant was  
6 in the building at an unauthorized time, that he disregarded Custodial Services Division rules and  
7 jeopardized the security and property of the Engineering Library, and that he was insubordinate  
8 when, after being directed to do so, he failed to provide the name of the individual who gave him  
9 the unauthorized University keys. Mr. Woodard concluded that Appellant's actions negatively  
10 reflected on the credibility and effectiveness of the division and were a violation and abuse of the  
11 trust placed in him by the University. Therefore, Mr. Woodard recommended that Appellant be  
12 dismissed from his position.

13  
14 **III. ARGUMENTS OF THE PARTIES**

15 3.1 Respondent argues that Appellant's actions created a liability for the University and that his  
16 loyalty to the person who gave him the keys was stronger than his loyalty to his employer.  
17 Respondent contends that Appellant can no longer be entrusted with University keys or property.  
18 Respondent further contends that an employee's honesty and truthfulness are reasonable  
19 expectations for an employer and that Appellant has violated these expectations. Respondent  
20 asserts that Appellant neglected his duty and violated University policies and expectations and that  
21 under these circumstances, dismissal is the only appropriate disciplinary action.

22  
23 3.2 Appellant asserts that dismissal is too severe. While Appellant admits that he used  
24 unauthorized keys to enter the building, he contends that he was in the building to get a head start  
25 on his cleaning responsibilities for the following day. Appellant contends that he is not a dishonest  
26

1 person and that he was trying to do the right thing by trying to get his work done. Appellant admits  
2 that his possession of the keys and his unauthorized entry into the building were wrong, but he  
3 argues that he was not in the building for evil purposes and asserts the he should not have been  
4 dismissed from his position.

#### 6 IV. CONCLUSIONS OF LAW

7 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter  
8 herein.

9  
10 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting  
11 the charges upon which the action was initiated by proving by a preponderance of the credible  
12 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the  
13 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of  
14 Corrections, PAB No. D82-084 (1983).

15  
16 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her  
17 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't  
18 of Social & Health Services, PAB No. D86-119 (1987).

19  
20 4.4 Willful violation of published employing agency or institution or Personnel Resources  
21 Board rules or regulations is established by facts showing the existence and publication of the rules  
22 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the  
23 rules or regulations. A willful violation presumes a deliberate act. Skaalheim v. Dep't of Social &  
24 Health Services, PAB No. D93-053 (1994).

1 4.5 Respondent met its burden of proof that Appellant neglected his duty. Appellant had a duty  
2 to be honest, trustworthy and forthright in his employment and to ensure the safety and security of  
3 the University in his assigned work areas. He neglected his duty when he admittedly withheld  
4 information from Respondent and refused to cooperate in Respondent's attempts to investigate and  
5 resolve the breach of security caused by the unauthorized keys. Furthermore, Appellant had a duty  
6 to utilize University authorized property in the performance of his duties and to access University  
7 facilities pursuant to his assigned schedule. Appellant neglected his duty when he utilized  
8 unauthorized keys to gain access to the Engineering Library outside of his scheduled work period.  
9 In addition, Respondent met its burden of proof that Appellant violated department rules and  
10 procedures. Appellant was aware of the department rules and procedures, yet he willfully chose to  
11 disregard them by possessing and using unauthorized keys.

12  
13 4.7 Under the undisputed facts of this case and in light of the serious violation of trust and  
14 damage to Appellant's credibility that Appellant caused by his deliberate actions, dismissal is not  
15 too severe a sanction. Therefore, the appeal should be denied.

16  
17 **V. ORDER**

18 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of David White is denied.

19  
20 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

21 WASHINGTON STATE PERSONNEL APPEALS BOARD

22  
23 \_\_\_\_\_  
Walter T. Hubbard, Chair

24  
25 \_\_\_\_\_  
Nathan S. Ford Jr., Member

26  
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